

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HENRY BOYNES,	NO. 2:15-CV-00139-CRE
Plaintiff	CIVIL ACTION – LAW
v.	
COUNTY OF LAWRENCE, SUSEN ROSSINO, M.D.; FRANCES KLOSS, R.N.; ROXANNE DEMONACO, R.N.; and PRIMECARE MEDICAL, INC.,	MAG. JUDGE CYNTHIA REED EDDY <i>ELECTRONICALLY FILED</i>
Defendants	JURY TRIAL DEMANDED

**CONCISE STATEMENT OF UNDISPUTED FACTS IN SUPPORT
OF MEDICAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

AND NOW, come Defendants Frances Kloss, RN, Roxanne Demonaco, RN, and PrimeCare Medical, Inc. (hereinafter collectively referred to as "Medical Defendants"), by and through their counsel, Johnson, Duffie, Stewart & Weidner, P.C., who file this Concise Statement of Facts in support of their Motion for Summary Judgment as follows:

1. This is a § 1983 negligence and Monell action arising out of the Plaintiff's incarceration at the Lawrence County Correctional Facility. (See, Plaintiff's Complaint, Doc. 1.)
2. Plaintiff maintains that he was injured as a result of a slip and fall which occurred in the shower and that the Medical Defendants failed to adequately treat an injury to his left elbow and left shoulder which occurred "in or around September 2012." (Doc. 1 at ¶ 12.)

3. The Plaintiff was first processed by PrimeCare Medical on May 4, 2012 and underwent an intake health assessment and suicide screening. (See, Intake Suicide Screening at **Exhibit A** and Receiving Screening/Health Assessment at **Exhibit B**.)

4. On July 11, 2012, the Plaintiff was seen in medical by Nurse Demonaco for complaints of back and arm pain. Plaintiff was prescribed Ibuprofen, 200 mg. (See, treatment note of July 11, 2012, at **Exhibit C**.)

5. Plaintiff continued to receive the Ibuprofen from July 11 through July 18, 2012. (See, Medication Administration Record at **Exhibit D**.)

6. Plaintiff entered a sick call request on July 18, 2012, requesting Ibuprofen for his shoulder and back. (See, Sick Call/Medical Request of July 18, 2012, at **Exhibit E**.)

7. Plaintiff was seen for his complaints on July 18, 2012, by Nurse Dennis. It was noted that he had continued complaints of shoulder and back pain. (See, treatment note of July 18, 2012, at **Exhibit F**.)

8. Plaintiff presented to Nurse Demonaco on July 26, 2012, with continued complaints of left shoulder pain. It was noted that he had fallen on his elbow and shoulder. At that time, the Plaintiff was prescribed Motrin 800 mg. (See, treatment note and Telephone/Verbal Order Form of July 26, 2012, at **Exhibit G**.)

9. Plaintiff put in a sick call slip on August 22, 2012 with complaints of pain in the arm, back and shoulder. (See, Sick Call/Medical Request of August 22, 2012, at **Exhibit H**.)

10. Plaintiff was seen by Nurse Demonaco on August 23, 2012. Nurse Demonaco noted that he had sustained an old trauma to the left shoulder. (See, treatment note of August 23, 2012, at **Exhibit I.**)

11. Plaintiff was seen by Dr. Sussen Rossino on August 28, 2012, in the Chronic Care Clinic. (See, Chronic Care Sick Call note of August 28, 2012, at **Exhibit J.**)

12. The records do not reveal any complaints of a slip and fall or injury to the Plaintiff's elbow throughout the month of September.

13. Dr. Rossino then evaluated the Plaintiff on November 29, 2012, as a part of the Chronic Care Clinic. At that time, there was no reference of any complaints regarding his elbow or a slip and fall. (See, Chronic Care Sick Call note of November 29, 2012, at **Exhibit K.**)

14. Plaintiff was thereafter transferred from the facility in on February 1, 2013.

15. While the Plaintiff was incarcerated at the Lawrence County facility, the facility had in place a grievance procedure. Plaintiff received a copy of the Inmate Handbook and, as such, would have been on notice of the grievance procedure. (See, Boynes Depo., p. 88, lines 9-22 at **Exhibit L.**)

16. The Medical Defendants did not receive any timely grievances from the Plaintiff concerning his treatment as a result the "incident in September of 2012." (Doc.1 at ¶ 12.)

17. Plaintiff failed to provide any grievances filed while incarcerated at the Lawrence County facility.

18. Plaintiff testified that he filed a grievance with a State Representative by the name of Butch Weird. (See, **Exhibit L**, p. 20, lines 6-11.) This is in contravention to any written policy in the Lawrence County Handbook. (See, Lawrence County Corrections Inmate Handbook at **Exhibit M.**)

19. Moreover, as noted above, this alleged incident occurred in "September 2012." (Doc.1 at ¶ 12) Plaintiff testified at the time of his deposition that the incident "could have been July, August, September." (See, **Exhibit L**, p. 38, lines 5-12.)

20. Plaintiff initiated this matter by way of Complaint on February 3, 2015, nearly six (6) months after the statute of limitations had run. (Doc. 1)

21. Plaintiff failed to serve any Defendant with his Complaint before the expiration of the two-year statute of limitations. (Doc. 1)

22. In fact, Plaintiff did not file his Complaint for nearly six (6) months after the subject incident. (Doc. 1)

23. Plaintiff mailed a grievance on November 18, 2013, to a Brian Covert at the Lawrence County Correctional Facility. (See, Inmate Request Form (grievance) and envelope at **Exhibit N.**)

Respectfully submitted,

JOHNSON, DUFFIE, STEWART & WEIDNER

By: s/John R. Ninosky

John R. Ninosky, Esquire
Attorney I.D. No. 78000
301 Market Street ~P. O. Box 109
Lemoyne, PA 17043-0109
Telephone (717) 761-4540
Email: jrn@jdsnw.com

Attorneys for PrimeCare Medical Defendants

Date: September 27, 2016

CERTIFICATE OF SERVICE

I hereby certify on the 27th day of September, 2016, that the foregoing *Concise Statement of Undisputed Facts* was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Louis J. Kroeck, IV, Esquire
Anstandig, McDyer and Yurcon
707 Grant Street, Suite 1300
Pittsburgh, PA 15219
lkroeck@gmail.com
Attorney for Plaintiff

Marie Milie Jones, Esquire
Michael R. Lettrich, Esquire
JonesPassodelis, PLLC
Gulf Tower, Suite 3510
707 Grant Street
Pittsburgh, PA 15219
mjones@jonespassodelis.com
mlettrich@jonespassodelis.com
Attorney for County of Lawrence

Terry C. Cavanaugh, Esquire
Brett C. Shear, Esquire
Marshall Dennehey Warner Coleman & Goggin
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219
tccavanaugh@mdwcg.com
bcshear@mdwcg.com
Attorney for Susan Rossino, M.D. (incorrectly identified as Dr. John Doe)

JOHNSON, DUFFIE, STEWART & WEIDNER

By: s/John R. Ninosky
John R. Ninosky